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In the

Supreme Court of the United States

October Term

1959

No. 753

ELLA BELL BENEDICT, ET AL.,
Petitioners,

v.

HAMILTON COUNTY BOARD OF REVISION,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Respondent, Hamilton County Board of Revision, respectfully submits that a writ of certiorari should not issue for the following reasons:

a. That the petition does not present a substantial Federal question, and

b. That the Federal question sought to be raised was not raised or expressly passed on by the Court below, and

c. The judgment rests on an adequate non-Federal basis.

STATEMENT OF CASE

This cause is before this Court upon a Petition for a Writ of Certiorari from a final judgment and decision of the Supreme Court of Ohio, affirming the decision of the Board of Tax Appeals, in and by which decision, the Board of Tax Appeals, upon appeal from the Hamilton County Board of Revision determined the true value in money of petitioners' real property for the tax year 1957.

The Board of Tax Appeals, in arriving at its determination, approved the final order of the Board of Revision of Hamilton County, which made an identical determination as to tax value, and wherein such Board of Revision reduced the value of petitioners' real property by $18,560.00 from the value placed thereon by the Hamilton County Auditor.

THE FEDERAL QUESTION PRESENTED IS NOT SUBSTANTIAL

Briefly stated the question presented is whether the taxing authorities of the State of Ohio, in valuing petitioners' real property for tax purposes, deprived the petitioners of due process of law, and denied them equal protection under the law, in violation of the Fourteenth Amendment of the Constitution of the United States.

ARGUMENT

The State court did not misinterpret petitioners' contention. To petitioners' contention that the County Board of Revision and the Board of Tax Appeals should assess petitioners' property at a percentage of its true value in money, the State Court said:

> "The Board of Tax Appeals has a broad discretion in fixing tax valuations, and this court has said many times that it will not substitute its judgment for that of the board. It is to be borne in mind that the determination of the true value of each parcel of real estate, with the improvements placed on it, is a separate undertaking and does not wholly depend on values accorded other parcels in the same vicinity. A particular parcel, because of its location and the improvements thereon, may properly be given a higher value than other parcels in the same neighborhood, without discrimination resulting. After all, true value of the particular property is the controlling consideration, and this is a question of fact primarily within the province of the taxing authorities. If there is no patent abuse apparent in fixing property valuations for taxes, a court will not disturb such finding. On the entire record, this court can not hold that the decision of the Board of Tax Appeals herein is unreasonable or unlawful, and its decision is, therefore, affirmed."

It can be seen from the foregoing quoted provision of the State Court's opinion that the Court did not misinterpret petitioners' contentions, and it might also be noted that the State Court did not premise its decision on its former holding in the case of *Rollman & Sons Company* v. *Board of Revision of Hamilton County, Ohio*, 163 O. S. 363, but rather based its opinion on the record in the instant case before the State Board of Tax Appeals.

The issue raised herein has been settled by this Court in the case of *Southern Railway Company* v. *Watts, et al.*, 260 U. S. 519, wherein Justice Brandeis had the following to say:

> "The claim that plaintiffs have been denied equal protection of the laws appears to rest more largely on the charge that discrimination has been practiced against them in administering the tax laws. It is urged that county boards, proceeding under ¶ 28a of the Act of 1921, reduced real estate valuations quite generally, but that the state board, acting under ¶ 28g, refused to reduce the valuation of any railroad except that of the Norfolk & Southern. The rule is well settled that a taxpayer, although assessed on not more than full value, may be unlawfully discriminated against by undervaluation of property of the same class belonging to others. *Raymond* v. *Chicago Union Traction Co.*, 207 U. S. 20. This may be true although the discrimination is practiced through the action of different officials. *Greene* v. *Louisville & Interurban R. R. Co.*, 244 U. S. 499. But, unless it is shown that the undervaluation was intentional and systematic, unequal assessment will not be held to violate the equality clause. *Sunday Lake Iron Co.* v. *Wakefield*, 247 U. S. 350, 353; *Chicago, Burlington & Quincy Ry. Co.* v. *Babcock*, 204 U. S. 585; *Coulter* v. *Louisville & Nashville R. R. Co.*, 196 U. S. 599; *Sioux City Bridge Co.* v. *Dakota County, ante*, 441. Plaintiffs have clearly failed to establish that there was intentional and systematic undervaluation by the county boards . . .
>
> At the most there have been errors of judgment; and mere errors of judgment are not subject to review in these proceedings. *Pittsburgh, Cincinnati, Chicago & St. Louis Ry. Co.* v. *Backus*, 154 U. S. 421; *Brooklyn City R. R. Co.* v. *New York*, 199 U. S. 48, 52."

The petitioners rely heavily upon the decision of this Court in the case of *Sioux City Bridge Co.* v. *Dakota County, Nebraska,* 260 U. S. 441. However, petitioners fail to observe that this Court remanded the cause to the state court, inviting attention to the well established rule laid down in *Sunday Lake Iron Co.* v. *Wakefield,* 247 U. S. 350, 353, wherein this Court said:

> "that mere errors of judgment do not support a claim of discrimination, but that there must be something more — something which in effect amounts to an intentional violation of the essential principle of practical uniformity. The good faith of such officers and the validity of their actions are presumed; when assailed, the burden of proof is upon the complaining party."

The equal protection clause of the Constitution does not prohibit inequality in taxation which results from mere mistake or error of judgment of tax officials; *Pittsburgh, C., C. & St. L. R. Co.* v. *Backus,* 154 U. S. 421, 435; *Coulter* v. *Louisville & N. R. Co.,* 196 U. S. 599, 609; *Brooklyn City R. Co.* v. *New York,* 199 U. S. 48, 52; *Sioux City Bridge* v. *Dakota County,* 260 U. S. 441, 447; *Southern R. Co.* v. *Watts,* 260 U. S. 519, 527; *Baker* v. *Druesedow,* 263 U. S. 137, 142; *Cumberland Coal Co.* v. *Board,* 284 U. S. 23, 25; *Rowley* v. *Chicago & Northwestern R. Co.,* 293 U. S. 101, 111; *Great Northern R. Co.* v. *Weeks,* 297 U. S. 135, 139; or which is not shown to be the result of intentional or systematic under-valuation of some but not all of the taxed property in a single class; *New York* v. *Barker,* 179 U. S. 279, 284, 285; *Coulter* v. *Louisville & N. R. Co., supra; Chicago, B. & Q. R. Co.* v. *Babcock,* 204 U. S. 585; *Sunday Lake Iron Co.* v. *Wakefield,* 247 U. S. 350, 353; *Sioux City Bridge* v. *Dakota County, supra,* 447; *Southern R. Co.* v. *Watts, supra; Snowden* v. *Hughes,* 321 U. S. 1, 9.

It is submitted that petitioners have failed to establish that the county assessing authorities entertained or are chargeable with any purpose or design to discriminate against petitioners or their property.

Although petitioners in their application for rehearing in the court below briefly alluded to the case of *Sioux City Bridge Co.* v. *Dakota County, Nebraska,* 260 U. S. 441, they did not present in their assignment of error in the Supreme Court of Ohio nor in their briefs any Federal question, nor was a Federal question passed on in any way by the Supreme Court of Ohio in its opinion.

The question raised by petitioners is raised for the first time in this Court, and therefore no substantial Federal question is raised, and the opinion of the state court rests upon an adequate non-Federal basis.

We respectfully submit, therefore, that the petitioners present no substantial Federal question for the decision of this Court, and that the Writ of Certiorari prayed for should not be allowed.

Respectfully submitted,

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